IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1287 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANTRAO VINAYAKRAO KHOPKER

Versus

INDUMATIBEN RAMCHANDRA PRADHAN

Appearance:

1. Civil Revision Application No. 1287 of 1983

MR GAURANG PATEL FOR

MR NK MAJMUDAR for Petitioners Nos. 1/1-1/5

MR GIRISH D BHATT for Respondent No. 2,4,5 & 7 to10

Respondents Nos. 1, 3 & 6 :: Deleted

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/09/2002

ORAL JUDGEMENT

This Revision Application preferred under section

29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] arises from the judgment and order dated 13th August, 1982 passed by the Joint District Judge, Vadodara in Civil Appeal No. 170 of 1980. The petitioner before this Court is the respondent-plaintiff.

The learned advocate Mr.G.D Bhatt appearing for the respondents nos. 1 to 5 & 7 to 10 informs that the respondent no. 1 has died on 28th May, 1998 and the respondent no. 3 has died on 7th November, 1990. Inspite of the intimation to the learned advocate Mr. Majmudar, the heirs and the legal representatives of the said respondents have not been brought on the records of the matter. Hence, the names of the respondents nos. 1 and 3 are ordered to be deleted from the cause title of this Revision Application. Be it noted that the name of the respondent no. 6 has been deleted pursuant to the Order dated 5th November, 1984.

The petitioner-plaintiff instituted Rent Suit No. 1115 of 1976 in the court of Small Causes at Vadodara against one Ramchandra Shridhar Pradhan, the predecessor of the present respondents. The plaintiff claimed that she had become the owner of the property bearing no. RA-307, situated at Sitaram Buva, Kharivav Road, Vadodara under the Will of the former owner one-Laxmibai Dharkar. The said property [hereinafter referred to as, "the suit property"] was leased by the former owner Laxmibai Dharkar to the defendant on the monthly rent of Rs. 40/=; that the defendant was liable to pay water tax and the education cess; that the plaintiff having inherited the suit property was entitled to recover the rent from the defendant; that the defendant was in arrears of rent since 1st April, 1971; the defendant was given notice of demand as envisaged under sub-section (2) of section 12 of the Rent Act; the defendant had received the said notice, however, neglected to pay the arrears of rent or to hand-over the possession of the suit property. Instead, the defendant filed Civil Misc. Application No. 392 of 1976 for fixation of the standard rent as envisaged under sub-section (3) of section 11 of the Rent Act. The plaintiff claimed that since defendant no. 1 failed to pay the rent due or to deposit the same in the Court, the plaintiff was entitled to recovery possession of the suit property. He also claimed that he required the suit property for personal use.

Pending the suit, the defendant died. His heirs and legal representatives, the present respondents were brought on the records. The defendants contested the

suit by filing written statement Exh. 11. It was contended that the defendants were not liable to pay any tax or any other amount except the agreed rent and the electricity bills. He denied that he was liable to pay the water tax and the education cess, as demanded. The learned trial Judge was, under the judgment and order dated 31st March, 1980, pleased to allow the suit and the Misc. Civil Application No. 392 of 1976. The trial Court passed the decree for possession and the arrears of rent from 1st August, 1973 to 31st July, 1976. The trial Court also fixed the standard rent at Rs. 20/= per month inclusive of all taxes and education cess and exclusive of light charges.

Feeling aggrieved by the decree for possession, the defendants preferred Civil Appeal No. 170 of 1980 in the court of District Judge, Vadodara. The appeal was allowed by the learned Joint District Judge, Vadodara on 13th August, 1982. Feeling aggrieved, the plaintiff has preferred the present Revision Application.

Indisputably, the defendant raised the dispute as to the standard rent of the suit premises before the expiration of one month from the date of receipt of the suit notice given under sub-section (2) of section 12 of the Rent Act. Both the courts below have, therefore, rightly held that the defendant was entitled to protection under section 12 (3)(b) of the Rent Act. The learned trial Judge on 14th July, 1976 made an Order in Misc. Civil Application No. 392 of 1976 fixing the interim standard rent at Rs. 20/= per month. The learned trial Judge held that having fixed the interim standard rent, the defendant ought to have tendered such amount every month regularly. However, the defendant failed to do so and thus has forfeited the right to protection under section 12 (3)(b) of the Rent Act. The lower appellate court, however, was of the opinion that since the standard rent was fixed by the Court alongwith the final judgment passed in the suit, the defendant would not be deprived of the right to protection under section 12 (3)(b) of the Rent Act, until the date of the determination of the standard rent by the Court. The lower appellate court, therefore, proceeded to set-aside the decree passed by the trial Court.

I am afraid, the lower appellate court has erred, first, in not setting out the points for determination as envisaged under Order XLI Rule 31 CPC; and second, by not examining whether even after fixation of the standard rent by the trial Court, the defendants had pending the appeal tendered the amount of rent regularly every month.

Both the learned advocates also are unable to assist the Court on this point. Hence, in my view, the appeal requires to be decided afresh, after framing the points for determination and decision on each such point.

In the result, this Revision Application succeeds. The Revision Application is allowed. The judgment and order dated 13th August, 1982 of the learned Joint District Judge, Vadodara passed in Civil Appeal No. 170 of 1980 is quashed and set-aside. Civil Appeal No. 170 of 1980 is remanded to the Court below for hearing and decision afresh. The court below shall, on the basis of the rival contentions, frame the points for determination as envisaged under Order XLI Rule 31 CPC and shall give decision on all such points. Rule is made absolute to the above extent. The parties shall bear their own costs.

{Ms. R.M Doshit, J.}

Prakash*